

MONTANA LEGISLATIVE HISTORY

Chapter 4 19 73

Bill H _____ S 4 Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Jan 15 ☒ C

_____ ☐ C

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_____ ☐ C

Date Out Jan 15 ☒ C

S. Committee on Judiciary

Hearing Date(s) Jan 03 ☒ C

_____ ☐ C

_____ ☐ C

_____ ☐ C

Jan 03 ☒ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE JUDICIARY COMMITTEE MEETING---January 3, 1973

The meeting was called to order by the Chairman, Senator McKeon. All members were present with the exception of Senator Gilfeather who was ill.

The committee discussed several bills:

- SJR No. 1--Senator Harrison moved that the bill do pass. Senator Drake seconded the motion and the committee voted unanimously to recommend the bill DO PASS.
- SJR No. 2--Senator Drake moved that the bill do pass. Sen. Boylan seconded the motion and the committee voted unanimously to recommend the bill DO PASS.
- SJR No. 3--Sen. Harrison moved that the bill be amended by striking lines 5, 6, and 7 on Page 3. The motion was seconded by Sen. Hall and the committee voted unanimously to amend the bill. Sen. Harrison moved that the bill do pass as amended and the motion was seconded by Sen. Hall. The committee unanimously voted the bill DO PASS AS AMENDED.
- SJR No. 4--Sen. Harrison moved that the bill do pass. Sen. Zody seconded the motion; and the committee unanimously recommended DO PASS.
- SB No. 3--Sen. Drake moved the bill do pass. Sen. Harrison seconded the motion; and the committee unanimously recommended the bill DO PASS.
- SB No. 4--Sen. Drake moved the bill do pass. Sen. Harrison seconded the motion. The committee unanimously recommended do pass. Senator Turnage moved that this bill be reconsidered for amendments. Sen. Moore seconded. The committee unanimously voted to reconsider. Sen. Turnage moved that the bill be amended on Page 2, Line 7 by striking the words "default of appearance or by" after the word "upon" and before the word "written" so that this section will read "Upon written consent of the parties..." Moore seconded this motion and the committee voted unanimously in favor of it. Sen. Turnage moved this bill do pass as amended; Sen. Moore seconded the motion; the committee unanimously agreed that the bill DO PASS AS AMENDED.
- SB No. 6--The chairman decided to hold this bill back so that further study could be done. Sen. Harrison felt implementation of the bill should go into effect before July 2.
- SB No. 8--The committee decided to contact Roger Hazell of the Legislative Council staff to help discuss the bill.
- SB No. 19--Sen. Harrison moved the bill do pass; Sen. Drake seconded the motion; the committee unanimously voted in favor of the motion that the bill DO PASS.
- SB No. 22--Sen. Harrison moved the bill do pass; Sen. Hall seconded the motion; the committee voted unanimously the bill DO PASS.

J U D I C I A R Y

Senate Committee

Date 1/3/72 5 Bill No. 4Time 3:00

	Y	N
McKeon	✓	
Gilfeather	✓	
Boylan	✓	
Hall	✓	
Zody	✓	
Drake	✓	
Harrison	✓	
Moore	✓	
Turnage	✓	

M. J. Rice

Mary Jane Rice, Secretary Senator McKeon, Chairman

Motion: as so amended - do pass

J U D I C I A R Y

Senate Committee

Date 1/3/12 5 ~~5~~ Bill No. 4 Time 3.00

	Y	N
McKeon	-	
Gilfeather	-	
Boylan	-	
Hall	-	
Zody	-	
Drake	-	
Harrison	-	
Moore	-	
Turnage	-	

Mary Jane Rice
 Mary Jane Rice, Secretary Senator McKeon, Chairman

Motion: amend as follows: on page 2 line 17
by striking the words "defiant of appearance" as they
appear following the word "upon" & before the
word "written."

JUDICIARY

Senate Committee

Date 1/3/72 S Bill No. 4 Time 2:30

	Y	N
McKeon	✓	
Gilfeather	✓	
Boylan	✓	
Hall	✓	
Zody	✓	
Drake	✓	
Harrison	✓	
Moore	✓	
Turnage	✓	

Mary Jane Rice
Mary Jane Rice, Secretary

McKeon
Senator McKeon, Chairman

Motion: do pass

January 15, 1973

JUDICIARY COMMITTEE

The sixth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Monday, January 15, 1973 at 9:00 a.m. Representative John C. Hall, Chairman, presided. All members were present except Representative Yardley, absent, and Representative Warfield, absent excused.

HOUSE BILL 81 Representative William Zimmer, Flathead County, summarized this bill which he introduced and urges support of. Representative Zimmer stated this bill relieves auto driver from all responsibility when he hits a rancher's livestock on the highway. Chairman Hall moved to, without objection, pass on until tomorrow.

HOUSE BILL 102 Chairman Hall summarized this bill introduced by Representative Brand. Representative Lucas moved DO PASS. Representative Baucus seconded. Motion passed unanimously.

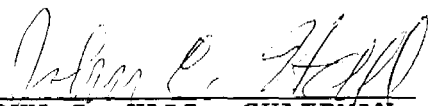
SENATE JOINT RESOLUTION 2 Chairman Hall summarized this bill which concerns governmental immunity. Representative Marbut moved that bill be amended by deleting the word "second" and inserting in lieu thereof the word "regular", this to be done both on page 1, line 10, title, and again on page 2, line 21; and also amend on page 2, line 22, by deleting the word "firty" and inserting the word "forty" in lieu thereof and AS AMENDED, BE CONCURRED IN. Representative Greely seconded. Motion passed unanimously. Representative Lucas will carry.

SENATE BILL 4 Chairman Hall stated this bill should not be a problem. Representative Lucas moved BE CONCURRED IN. Representative McKittrick seconded. Motion passed with Representative Greely voting no. Representative McKittrick will carry.

SENATE BILL 22 Following summary of this bill to remove the minimum jurisdictional amount for district courts discussion ensued. Representative Lucas moved that Senate Bill 22 be amended on page 2, section 1, subsection (b), line 7 by inserting the words "and probate" after the word "civil" so that this subsection reads "all civil and probate matters," and BE CONCURRED IN AS AMENDED. Representative Greely seconded. Motion passed unanimously. Representative Towe will carry.

The meeting was adjourned at 9:55 a.m.

JCH:pb


JOHN C. HALL, CHAIRMAN

judge, it must be transmitted directly to the supreme court, who shall thereupon designate and direct a judge of the district court of another district to preside at the trial of such indictment and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment.

(c) If the defendant is in custody or has given bail and *eight (8)* jurors do not concur in finding an indictment, the foreman shall so report to the court in writing forthwith.

(d) When an indictment is found against a defendant, a warrant must issue for his arrest and he must be brought before the court, unless the court orders otherwise."

Section 4. Section 93-1801, R.C.M. 1947, is amended to read as follows:

"93-1801. **Grand jury—when and how to be impaneled.** Whenever in the opinion of the district judge a grand jury is necessary, he must make an order directing a grand jury to be drawn and summoned to attend before the court. The order must specify the number of such jurors to be drawn, which must not be less than *fifteen (15)* nor more than *twenty (20)*. The names of such jurors must be drawn from jury box No. 1, mentioned in section 93-1404, and the list of names certified and summoned, as provided for drawing and summoning trial jurors, and the names of any persons drawn who may not be impaneled upon the grand jury must be again placed in said jury box No. 1."

Section 5. Section 93-1802, R.C.M. 1947, is amended to read as follows:

"93-1802. **How constituted.** When, of the persons summoned as grand jurors competent and not excused, *eleven (11)* are present, they constitute the grand jury. If more than *eleven (11)* of such persons are present, the clerk must write their names on separate ballots, and place *the* ballots in black capsules, which *the* capsules shall be deposited in a box large enough to hold all of *the* capsules without crowding, and which *the* box shall be so arranged that the clerk drawing *the* capsules from *the* box shall be unable to observe or see the capsule he is about to draw, and draw out *eleven (11)* of them, and the persons whose names are on the ballots so drawn shall constitute the grand jury. If less than *eleven (11)* of such persons are present, the court may order a sufficient number to be forthwith drawn from either box and summoned to attend the court. And whenever, of the persons to complete a grand jury, more attend than are required, the requisite number must be obtained by writing the names of those so summoned and not excused on ballots, which *the* ballots shall be placed

in black capsules, and thereafter deposited in a box, and then drawn as above provided."

Signed: January 24, 1973.

CHAPTER NO. 4

An Act Complying with Article II, Section 26 of the 1972 Montana Constitution, by Providing for Waiver of a Jury Trial and Less Than Twelve (12) Jurors in Felony Trials and Unanimity of all Jurors to Convict in Misdemeanor Trials; Amending Sections 95-1901, 95-1915, and 95-2006, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 95-1901, R.C.M. 1947, is amended to read as follows:

"95-1901. **Method of trial.** (a) All prosecutions except on a plea of guilty, deciding issues of fact shall be tried by the court and jury.

(b) Questions of law shall be decided by the court and questions of fact by the jury except on a trial for libel the jury shall determine both questions of law and of fact. *Questions of law and fact shall be decided by the court when a trial by jury is waived under subsection (d) of this section.*

(c) Defendants in all criminal cases shall have a right to trial by jury not to exceed twelve (12) in number. *The parties may agree in writing, at any time before the verdict, with the approval of the court that the jury shall consist of any number less than twelve (12).*

(d) *Upon written consent of the parties a trial by jury may be waived.*

(e) The plea of not guilty puts in issue every material allegation of the indictment, information or "complaint."

Section 2. Section 95-1915, R.C.M. 1947, is amended to read as follows:

"95-1915. **Verdict. (a) Return.** The verdict shall be unanimous in all *criminal actions*. Such verdict shall be signed by the foreman and returned by the jury to the judge in open court.

(b) Several defendants. If there are two (2) or more defendants the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it

has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) Conviction of a Lesser Offense. The defendant may be found guilty of an offense necessarily included in the offense charged, or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

Whenever a crime is distinguished into degrees, the jury, if they convict the defendant, must find the degree of the crime of which he is guilty.

(d) Poll of Jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence the jury may be directed to retire for further deliberations or may be discharged."

Section 3. Section 95-2006, R.C.M. 1947, is amended to read as follows:

"95-2006. **Verdict. (a) Return.** The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter, or cause it to be entered in the minutes. *The verdict must be unanimous.*

(b) Several Defendants. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those in regard to whom they do agree, on which a judgment must be entered accordingly, and the case as to the rest may be tried by another jury.

(c) Poll of Jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not *unanimous* concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(d) Discharge of Jury. The jury cannot be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them."

Signed: January 24, 1973.

CHAPTER NO. 5

An Act Subjecting Justices of the Peace to Impeachment to Comply with Article V, Section 13(1) of the 1972 Montana Constitution; Amending Sections 93-104 and 94-5401, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-104, R.C.M. 1947, is amended to read as follows:

"93-104. **Jurisdiction.** The court has jurisdiction to try impeachments, when presented by the house of representatives, of the governor, *executive officers, heads of state departments and judicial officers for felonies* and misdemeanors or malfeasance in office."

Section 2. Section 94-5401, R.C.M. 1947, is amended to read as follows:

"94-5401. **Officers liable to impeachment.** The governor, *executive officers, heads of state departments*, and judicial officers shall be liable to impeachment for *felonies* and misdemeanors, or malfeasance in office."

Signed: January 24, 1973.

CHAPTER NO. 6

An Act Amending Section 93-2906, R.C.M. 1947, to Delete Reference to the 1889 Montana Constitution; and to Rearrange Subsection (4) to be More Readable.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-2906, R.C.M. 1947, is amended to read as follows:

"93-2906. **Place of trial may be changed in certain cases.** The court or judge must, on motion, change the place of trial in the following cases:

1. When the county designated in the complaint is not the proper county.

2. When there is reason to believe that an impartial trial cannot be had therein.

3. When the convenience of witnesses and the ends of justice would be promoted by the change.

4. *When the judge is disqualified from acting for any cause; but no change of the place of trial shall be made if:*

(a) *the parties agree in writing upon another district judge, or members of the bar as judge pro tempore, or*